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**Accessible Taxi Program
Transportation Systems and Legal Analysis**

Key Points

- There is no legal requirement that the City have ordinances that mandate accessible taxicab service.
- Madison residents going to medical services are the primary beneficiaries of the service.
- State and County social service agencies are the primary revenue source for operating while federal capital funds are no longer available without operating or grant qualification changes.
- The current accessible taxi program is not financially self-sustaining in the competitive Madison market. The intended market, leisure trips on-demand, never developed over 10 years.
- Passengers and transportation companies will adapt quickly to the transitioning regulations (or lack thereof) requiring individuals to find ways to vet transportation suppliers on their own.

Current Situation

Licenses taxi cab companies provided 1,546,513 trips in 2014, of those 8,781 trips by Union Cab accessible taxis (.56%). Metro analyzed data from Union Cab's 2014 Accessible Taxi program. A breakdown of the Accessible Taxi data indicates:

Union Cab Accessible Cab Rides		
2014	Cash / CC Trips	Account Trips*
Cost / Trip	\$18.60	\$43.60
% of Ridership	52%	48%
% of Revenue	30%	70%
Ave. Miles / Trip	5.1 Miles	7.5 Miles

**Account trips are funded at agency rates that are above the meter rate. Cash and Credit Cards are charged the meter which is the same for all passengers in any cab.*

Of Account trips, more than 80% can be traced directly back to human service programs funded by the County or the State. Credit card transactions are not coded to separate personal cards from corporate cards. Accounts attributed to individuals represent about 12 unique individuals. Firmly 70% of trips originate and/or terminate in the city of Madison, 80% within the Metro+Plus service area that includes partner jurisdictions. Trip destinations were predominately clinics and medical services locations. Union Cab routinely declines trip requests based on advance bookings and vehicle availability.

Union Cab's Accessible Taxis are federally funded (5317 Grant Program) at 80/20 split of federal and provider match. Those vehicles are aging and about to be retired. The company is no longer an eligible recipient for that funding program or its successor.

Drivers are compensated at living wage and offered health insurance. Drivers are offered incentives to operate accessible taxis as commissions often outpace the earning potential of the accessible-taxi pay rate.

Union cab's accessible taxi program is highly prized amongst social service agencies for their expertise in special account handling and passenger assistance. Even so, they require the service be priced competitively to van services or agencies would have to seek out other transportation providers.

Taxi service is in transition

In 2004, the City of Madison enacted an ordinance that included a provision mandating accessible taxi services. The ordinance required that all licensees furnish twenty-four hour accessible taxicab service, either by providing an accessible vehicle in its fleet, or by contracting with another licensed operator to provide it. As a part of the negotiations between City leaders and the taxicab companies, this ordinance had a delayed effective date that would not be triggered until the City Traffic Engineer made a "finding of need" in an annual report to be approved by the Common Council. If after the fifth annual report, there was no "finding of need" the ordinance would sunset and have no further force and effect. After this ordinance was passed, Union Cab agreed to be the sole provider of accessible taxicab service, and has continued to provide that service until the present day. Because Union Cab was providing this service, there was never a "finding of need" and the ordinance has effectively sunsetted. **The City currently has no enforceable accessible taxicab ordinance in place**, although Union Cab continues to provide the service at this time.

By being the sole provider of accessible taxicab service, Union Cab could concentrate the service and get all of the solicited accessible rides. Even getting all of the accessible ride requests, Union Cab has relayed to City staff that they have been losing money on the accessible taxicab program since they began providing the service. It is estimated that Union Cab lost \$90,000 on the program in 2014, not including any capital costs for acquiring new vehicles. Accessible taxicabs typically cost approximately three times as much as a non-accessible vehicle. In addition to a higher purchase price, Union Cab has additional expenses related to providing the accessible service, which include increased maintenance and insurance costs, costs to train drivers, higher fuel costs, and wage guarantees/incentives for drivers who agree to drive the accessible vehicles. The loss that Union Cab reported in 2014 constitutes operating costs, as Union Cab did not purchase any accessible vehicles in 2014. Union Cab currently has 6 accessible vehicles in its fleet. Union Cab has relayed to City staff that they are contemplating ceasing providing accessible taxicab service.

The Entrance of TNC's

On or about April 2014, Transportation Network Companies (TNC's) Uber and Lyft began operating in the City. While it's too early in 2015 to compare to 2014, the 2013/2014 year- to-year comparison showed a 20,000 trip decline in the overall market.

The Common Council passed an ordinance regulating TNC's on March 31, 2015, and that ordinance became effective on April 9, 2015. The ordinance requires TNC's to comply with most of the taxicab

licensing requirements, with a few minor exceptions to accommodate their business model. Shortly after that ordinance was passed the State Assembly and the Senate passed a bill to regulate TNC's (AB 143/SB106) that would preempt local regulation. This bill is currently awaiting the Governor's signature. While it is difficult to estimate the financial effects this bill will have on taxicab business, with the increase in TNC vehicles on the roadway, there will be increased competition. In addition these TNC's would be subject to much less-stringent regulation, thereby decreasing their operating costs.

Taxi and TNC companies will adapt quickly to the changing regulations and demand: dramatically changing how we think of taxi service. Several taxicab companies have shown interest in adapting their business model to get licensed by the state as TNC's. If the companies change their business models to adapt, they could either become a TNC completely, or have a separate arm of their companies designated a TNC. The City would have no authority to regulate any portion of their company that is licensed as a TNC.

Other Changes Affecting the Accessibility Program

In addition to the entrance of TNC's into the market, several changes in state and local transportation programs have created downward economic pressure for the taxi market in Madison in the last few years. These include:

- Madison Metropolitan School District moved from taxis to van service for homeless children
- Madison Metro paratransit services moved from taxis to van service as a result of the 2010 competitive contracting process.
- The state moved from county administered non-emergency medical transportation (that made extensive use of local taxis) to a contracted statewide broker who has brought in companies from other states and dictated rates.

These changes have resulted in a mixed bag in terms taxi vehicle availability. Companies that adapt quickly, maintain their market shares. Demand for reliable service by the statewide NEMT broker push Madison taxis to serve the broker's passengers in underserved areas of the state.

Over the last four years, requests for taxi vehicle permits increased 14%, total taxi trips increased 9%, specialized-van permits increased 8% while van trips decreased 2.5%. The total Madison area taxi market is down 1.5% from 2013 to 2014.

Wisconsin specialized medical vehicles (SMVs) numbered 150 prior to the statewide brokerage in 2011. Now there are 15 companies as the statewide broker brought in out-of-state, non-regulated competitors. Now, many small operators with magnetized signs on the side of the vehicle compete in with highly regulated SMVs.

Due to recent extensive debate, comment on ride-sharing is merely this:
TNCs are only the boldest pressure to deregulate transportation services in our area.

ADA Requirements for Taxicabs

The Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101, *et seq.*(1990) applies to City-permitted public passenger vehicles, including taxicabs. The ADA prohibits discrimination against individuals with disabilities by owners/operators. An owner or a driver of a taxicab (or another public passenger vehicle) cannot decline service to passengers who are disabled, in wheelchairs, or

who have service animals. This means taxicabs cannot:

- Deny service to individuals with disabilities who are able to use ordinarily-equipped taxicab vehicles;
- Charge higher fares or fees to passengers with disabilities;
- Deny a ride to an individual using a service animal; or
- Refuse to assist with stowing wheelchairs or other mobility devices for a disabled individual.

Under Title III of the ADA, *private entities are not required to purchase or drive wheelchair-accessible vehicles*. There is no requirement that taxicab companies operate any particular number of wheelchair-accessible vehicles among their fleet. The Department of Transportation's (DOT) preamble to its 1991 regulations reaffirms these rules:

Nothing in the [ADA] requires an entity to acquire a [wheelchair-accessible] van; if a taxi company acquires only automobiles, it need never obtain an accessible vehicle. Given the absence of specific statutory language requiring a mix of accessible vehicles in taxi fleets, we believe that to impose such a requirement...would be inappropriate. *DOT, Preamble – Transportation of Individuals with Disabilities (Sept. 6, 1991)*

The ADA does require that if a company purchases or leases a vehicle to use as a taxicab that is NOT an automobile, the vehicle is required to be wheelchair-accessible. This essentially means that all vans and minivans used as taxicabs are to be wheelchair-accessible.

Because of the emergence of so many new models of SUV's/Crossover vehicles being used as taxicabs, there is ongoing litigation over what is defined as a van under the ADA and advocates have asked the DOT to provide some clarity. <http://www.nydailynews.com/new-york/500-city-cabs-violate-federal-law-ag-article-1.1522696>

The City of Madison would not be opening itself up to liability if Union Cab decides to stop offering accessible taxicab service. Under the ADA, a public entity that merely licenses a private transportation industry like taxicabs is not engaged in the operation of that taxicab system; thus the public entity is not liable for a private licensee's failure to comply with ADA requirements. *There is no legal requirement that the City have ordinances that mandate accessible taxicab service.*

"Title II(A) makes clear that "[t]he programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by [Title II(A)]...[a]lthough licensing standards are covered by title II, the licensee's activities themselves are not covered. An activity does not become a 'program or activity' of a public entity merely because it is licensed by the public entity.'...accordingly, even if private industry (such as the New York City taxi industry) fails to provide meaningful access for persons with disabilities, a licensing entity (such as the TLC) is not therefore in violation of Title II(A), unless the private industry practice results from the licensing requirements." *Noel v. New York City Taxi & Limousine Comm'n*, 687 F.3d 63, 70 (2d Cir. 2012).

What other Cities are Doing

Chicago, NYC, and Washington D.C. are all implementing or contemplating new programs to increase demand-responsive handicap accessible taxicab service. Both NYC and D.C. assess

surcharges on every taxi ride in the city in order to subsidize taxi companies for purchasing or retrofitting vehicles for handicap accessibility. All three offer discounts on licenses for wheel-chair accessible vehicles (WAVs) and/or an extra license fee for non-WAVs. Chicago adds several further incentives for WAVs, like cutting in taxi lines at airports and a longer period of years the WAV can stay on the road. NYC offers a major tax credit for converting vehicles.

Chicago

(<http://www.cityofchicago.org/city/en/depts/bacp/provdrs/vehic/news/2014/sep/wheelchairaccessible-taxicabs.html>)

Mandates: Previously, any taxi fleet of 25 licenses (medallions) or more had to have at least 5% of its fleet as wheelchair accessible vehicles (WAV). Now, any fleet of 10 or more medallions must have at least 10% of its fleet in WAV by the end of 2018.

Fees:

- Additional \$100 on annual medallion fee for all non-WAVs.
- \$100 discount on annual medallion fee for WAVs.
- The City sets aside \$100 of every medallion application into the City Accessibility Fund (§ 9-112-150(a)(i))
 - § 9-112-010: “**Accessibility fund**” means a fund used to improve the services of taxicabs and transportation network vehicles (as defined in Section 9-115-010) for people with disabilities. Uses of this fund include, but are not limited to, reimbursement for costs associated with converting or purchasing a vehicle to be used as a taxicab or transportation network vehicle that is fully wheelchair accessible by ramp or lift. The maximum amount of reimbursement per taxicab vehicle from the fund, and the conditions of reimbursement and the maximum amount of reimbursement per a transportation network vehicle from the fund will be established by rules and regulations, in consultation with, among other individuals as the commissioner may determine, representatives from the Mayor’s Office for People with Disabilities, the community of people with disabilities, the taxi industry, and the transportation network providers industry.
- Transportation network providers (e.g. Uber) must pay into the City Accessibility Fund too.

Incentives:

- WAV Reimbursement Cost Plan (from the City Accessibility Fund)
- WAVs get a voucher to cut in line at airports.
- WAVs can stay on the road for a greater number of years than regular taxis.

New York City (http://www.nyc.gov/html/tlc/downloads/pdf/press_release_03_26_14.pdf)

Fees:

- **Thirty cent surcharge** on all taxi rides in the city, to finance conversion or purchase of vehicles.
 - Lottery system decides which medallion holders to have convert and when.

Incentives:

- **State tax credit** of \$10,000 for purchasing or converting taxis to WAVs.
- Drivers get an additional \$6-15 fee from the city for responding to calls from Accessible Taxi Dispatcher.

Washington D.C. (Report attached)

Fees:

- **Twenty cent surcharge** on all taxi rides in the city, to help taxi companies convert or purchase WAVs.

Incentives:

- **Public Vehicle-for-Hire Consumer Service Fund** is partially used for "Providing grants, loans, incentives and other financial assistance to owners of licensed taxicabs legally operating and incorporated in the District to incentivize the purchase and use of alternative-fuel vehicles and wheelchair-accessible vehicles, directing licensed taxicabs to underserved areas, and to offset costs associated with meeting the mandates of the Act."

Budget Issues

While the County and agencies that provide 70% of the revenue for the accessible taxi program value the high quality and relation developed with Union and its drivers, they believe that they can develop those relationships with a new provider or van service if the accessible taxis were not available. While the program is desirable for human services trips, it is not necessary.

Eight Individuals with accessible taxi accounts (out of 11) all have established Metro Plus eligibility. If Metro Plus absorbed an estimated 5,000 wheelchair accessible trips (Cash & Credit card trips, assuming county would absorb account trip portion), staff estimates an additional \$351,000 in additional costs to the city.

Anticipated Changes and Impact

The Statewide Non-Emergency Medical Transportation broker model provides recent experience on what we can anticipate with state level regulation of these types of services:

- Taxis will adapt to fit the state TNC regulation to compete statewide;
- Under state regulation, Taxis will go **where** the revenue is, **when** the revenue is available;
- Accessible services would not be required by state TNC regulations;
- If taxis adapt to qualify Under state regulation, taxis will not meet the standards required for many of the County human service trips currently provided;
- Under state regulation, complaint resolution will be handled at the state level, Expect complaints to be resolved at the satisfaction of the company, not the regulator; and,
- Under state regulation, Madison will lose the ability to control taxi rates, driver approval, 24/7 city coverage, adequate taxi availability when surge events occur in far away urban areas, independent operators from other communities serving Madison surge events.
- Not everyone will get reliable transportation service, accessible or otherwise.

Options

Policy

- Minimum compliance with the Americans with Disabilities Act requires private taxi companies to provide wheelchair accessible service if they run any type of van in their fleets. Several local companies do not meet this standard.
- Engage the currently- licensed specialized- transportation companies that already have the vehicles and licenses to consider offering on-demand services.
Badger Bus Lines and Transit Solutions are considering the service as the Union Cab situation has come to light.

- If the service is to be preserved, make it contingent on availability of funding options and partners to sustain availability the intended market (on-demand, leisure trips).

Funding Plan for 2015

Funding partnerships may be a viable solution.

- Subsidize the program for 2015.
 - City and county could negotiate short term funding.
 - Immediate capital funding for accessible taxi vehicle acquisition is needed to maintain current system capacity.
 - Operating assistance would be required to mitigate deficit spending by the service operator.

Funding Plan for 2016

- Negotiate with Dane County for operating assistance. Madison residents funded by human services organizations generate more than 70% of the **operating** revenue in the current program.
- Dane County has expressed interest in applying for capital assistance with Union Cab being the subrecipient.
- Community Development Block Grants may be available to **capitalize** accessible van purchases. The City can lease the vehicles for a minimal fee to transportation providers. The City would need to adjust its grant requirements to do so.
- Contracting through Metro is not an option due to even stricter and more burdensome FTA regulatory requirements. This has been a factor in Metro paratransit contracting with Union Cab for some time.
- Union Cab could designate the accessible taxis (only those taxis) as shared-ride vehicles and become eligible for 5310 Capital Assistance similar to their previous New Freedom funding. Given the capacity of the current vehicles, a shared-ride designation would be difficult to implement.

Contributors

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Invited but unable to attend:

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Rick Nesvacil, General Manager, Madison Taxi



Capital Times Journal- Jeff Erlanger, Mayor Cieslewicz, and John McNamara announcing Union Cab's Accessible Cab program.